

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT TACOMA

ANDRE THOMPSON, a single man; and
BRYSON CHAPLIN, a single man,

Plaintiffs,

v.

CITY OF OLYMPIA, a municipal
corporation and local government entity;
and RYAN DONALD and "JANE DOE"
DONALD, individually and the marital
community comprised thereof,

Defendants.

No. 3:18-cv-05267-RBL

MOTION AND MEMORANDUM
REGARDING CONTROLLING THE
GALLERY OF THE COURTROOM

Noted: Friday, September 20, 2019

I. INTRODUCTION

Defendants respectfully request that this Court control the gallery of the Courtroom during this trial and not permit Plaintiffs to intimidate and influence the jury through numerous supporters. During the criminal trial of the now Plaintiffs, some days 30-40 people would appear in Court wearing purple shirts in a clear effort to intimidate the jury. Defendants want to avoid the prejudice this would create if similar behavior occurred in this Court.

II. STATEMENT OF FACTS

The mother of the Plaintiffs, Crystal Chaplin, has galvanized her Facebook community through a series of posts and made her sons' trial a Facebook "event." *Declaration of Andrew G. Cooley in Support of this Motion*, ¶ 2, **Exhibit A**.

1 As part of these posts, Ms. Chaplin calls the police “the real gang members.” As of
 2 this date, 124 individuals have responded that they are interested in attending the trial.
 3 *Cooley Dec.*, at ¶ 3.

4 Ms. Chaplin made a shirt for her “BF” Lisa Ganser, in which Ms. Chaplin described
 5 Defendant Officer Ryan Donald as a “trigger happy person and a DANGEROUS
 6 MURDERER NARCISSISTIC PSYCHOPATH who should not be a kop.” *Cooley Dec.*,
 7 **Ex. B.**

8 Additionally, Ms. Chaplin called Defendant Donald a “piss ant of a man” (*Id.*
 9 **Ex. C**) and an “Evil Terrorist (*Id.* **Ex. D**). She also posted: “the f***ing cops can watch my
 10 page all they want, just remember you narcissistic psychopaths we are also watching you
 11 too. I SEE YOU.” *Id.* **Ex. E.**

12 Although Ms. Chaplin asks her Facebook community to be respectful, and not wear
 13 certain clothing and exhibit certain behaviors if they attend this trial, it is likely that this
 14 advice will not be followed in light of the inflammatory posts described above. *Cooley*
 15 *Dec.*, at ¶ 5. Counsel for the Defendants personally sat through some of the criminal trial of
 16 the Plaintiffs and observed just the opposite. Individuals appeared wearing the color purple
 17 in a show of solidarity with the Plaintiffs, including Mr. Chaplin’s counsel, who wore a
 18 purple suit some days. Plaintiffs (then the criminal Defendants) were engaged in tactics
 19 that were intended to influence and intimidate the jury in the criminal case. *Id.* at ¶ 5.

20 Supporters of the Plaintiffs wrote messages such as “Free Bryson and Andre” in
 21 sidewalk chalk in front of the courthouse during the criminal trial. Ms. Ganser took pictures
 22 ostensibly of herself yet had jurors’ faces in the background and later published the
 23 photographs of the jurors on the internet. *Cooley Dec.*, ¶ 5.

24 Defendants want to avoid these behaviors and influencing of the jury in this case.
 25 This is a serious proceeding in which Officer Donald has been sued and accused of
 26 violating the Plaintiffs’ civil rights. He has a constitutional right to a fair trial. The conduct
 27 of those in the gallery should not turn into a sideshow ripped from the script of Law &

Order.

III. ISSUE PRESENTED

Should this Court keep the gallery free from spectators who may influence or intimidate the Jury? Yes.

IV. EVIDENCE RELIED UPON

Declaration of Andrew Cooley in Support of this Motion and Exhibits Thereto.

V. LEGAL ANALYSIS

The U.S. Supreme Court has consistently affirmed that both criminal and civil litigants have a constitutional right to an impartial jury. *Warger v. Shauers*, 574 U.S. 40, 135 S. Ct. 521, 528, 190 L. Ed. 2d 422 (2014). For this reason, trial judges can and should exclude individuals from the courtroom if it is apparent that their presence might prejudice the jury. *Sheppard v. Maxwell*, 384 U.S. 333, 357–58, 86 S. Ct. 1507 (1966).

In a courtroom itself, the right to “free speech” is extremely limited where the fairness and impartiality of the judicial proceedings are at stake. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1071, 111 S. Ct. 2720, 2743, 115 L. Ed. 2d 888 (1991). Additionally, “the public has no right to attend pretrial proceedings.” *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 389, 99 S. Ct. 2898, 61 L. Ed.2d 608 (1979). It is constitutional for the court to deny the public access to the courtroom where an open proceeding would pose a “reasonable probability of prejudice.” *Id.* at 393 (citations omitted) (holding the First and Fourteenth Amendments were not violated where the transcript of a hearing was made available to the press and to the public *after* the hearing only once the danger of prejudice had dissipated).

On a related note, the Supreme Court has recognized instances where community hostility can call the impartiality of the jury into question. *See Skilling v. United States*, 561 U.S. 358, 438, 130 S. Ct. 2896, 2948, 177 L. Ed. 2d 619 (2010) “Community passions, often inflamed by adverse pretrial publicity, can call the integrity of a trial into doubt in extreme circumstances. In some instances, this Court has observed, the hostility of the

1 community becomes so severe as to give rise to a ‘presumption of [juror] prejudice.’” *Id.* At
2 the same time, however, only the most prejudicial information that viewers could not
3 reasonably be expected to ignore give rise to a presumption of prejudice. *Id.* at 382.

4 Such “community passions” may be significant enough to put the impartiality of the
5 jury in question where there is extensive prejudicial media coverage or if the “general
6 atmosphere in the community or courtroom is sufficiently inflammatory.” *Id.* at 443
7 (citations omitted). This type of jury bias is one that cannot always be exposed at *voir dire*.
8 *Id.* at 443–44.

9 In *Sheppard v. Maxwell*, the Supreme Court went as far to hold that the trial court
10 had a *duty* to take remedial measures to prevent prejudice caused by “inherently prejudicial
11 publicity which saturated the community and to control disruptive influences in the
12 courtroom.” *Sheppard*, 384 U.S. at 363, 86 S. Ct. 1507 (1966). There, the publicity
13 surrounding the trial was especially prejudicial because the media included statements by
14 prospective witnesses disseminating false information and otherwise inadmissible
15 evidence—creating the risk that the jury would rely on evidence available to the public that
16 was not present in the record. *Id.* at 360–61.

17 In *Sheppard*, it was reversible error that the trial court failed to limit the number of
18 reporters in the courtroom or take any measures to “control the release of leads,
19 information, and gossip to the press by police officers, witnesses, and the counsel for both
20 sides.” *Id.* at 359. The court did, however, fulfill its responsibility to control the courtroom
21 by barring the accused’s brother from remaining in the courtroom during trial after he
22 continued to make prejudicial statements to the press in an attempt to discredit the state
23 witnesses’ testimony. *Id.* at 359–60. *Sheppard*, of course, was decided before the advent of
24 social media and Facebook. Here, Crystal Chaplin’s public Facebook page, along with her
25 “BF Lisa Ganser” are analogous to the prejudicial comments to the press by the brother in
26 *Sheppard*.

Here, allowing the 124 individuals (and likely growing) Ms. Chaplin recruited to attend the proceedings is highly likely to prejudice and intimidate the jurors. Because there is no right for the public to attend trial or pretrial procedures, these individuals on Ms. Chaplin's event list should not be allowed to attend *voir dire*, nor the trial itself. *See, DePasquale, supra*, 443 U.S. at 389; *see also, Sheppard, supra*. But also, because these individuals have taken part in Ms. Chaplin's posts attempting to discredit the defense's witnesses and influence the outcome of the case—there is a high risk that the jury will be influenced by this false evidence and the fairness of the trial will be compromised.

VI. CONCLUSION

Based upon the foregoing, the Defendants respectfully request that this Motion be granted and the Court not allow the Plaintiffs to fill the courtroom with partisan supporters who may influence or intimidate the jury.

DATED: September 16, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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